Application No. 09/833,123
Attorney Docket No. 20852-0003

E.) REMARKS

This Response is filed in response to the Office Action dated June 24, 2004.

Upon entry of this Response, claims 1-20 will be pending in the Application.

In the outstanding Office Action, the Examiner rejected claims 1-5 under 35 U.S.C. 101; and rejected claims 1-6 under 35 U.S.C. 102(b) as being anticipated by Walker et al. (U.S. Patent No. 6,119,100).

Rejection under 35 U.S.C. 101

The Examiner rejected claims 1-5 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Specifically, the Examiner stated that

> In the present application, Independent claims 1, 3, 4 recite system and method
> steps. Independent claims 1, 3 and 4 clearly recite a "useful, concrete and tangible
> result" ("withdrawing the incentive based on the particular time periods"), however the
> claims recite no structural limitations (i.e., computer implementation), and so it fails the
> first prong of the test (technological arts).

Applicants respectfully traverse the rejection of claims 1-5 under 35 U.S.C. § 101.

In response thereto claims 1, 3 and 4 have been amended to add structural limitations in a manner believed to place the claims in the "technological arts" and to overcome the Examiner's rejection.

Therefore, in view of the above, Applicant submits that claims 1-5 are directed to statutory subject matter and comply with the provisions of 35 U.S.C. 101 and therefore are allowable.

Rejection under 35 U.S.C. 102

The Examiner rejected claims 1-6 under 35 U.S.C. 102(b) as being anticipated by Walker et al. (U.S. Patent No. 6,119,100), hereinafter referred to as "Walker."

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Specifically, the Examiner stated that

> With respect to claims 1-2, and 4-5, Walker teaches a method for allocating demand (Title). Monitoring demand associated with a plurality of time periods (col. 4, lines 47-55 and col. 6, lines 33-44); offering an incentive to customers placing an order during a particular one of the plurality of time periods, wherein the particular one of the plurality of time periods is associated with a low level of demand (i.e. the customer is offered a fist of offered prices during a period of low sale)(col. 4, lines 47-55 and col. 6, lines 33-44).
>
> and withdrawing the incentive responsive to receipt of a predetermined number of deliveries during the particular of the plurality of time periods (i.e. if the products is selling quickly during the defined time period, the seller can opt not to accept the offer or withdraw the offer)(col. 4, lines 47-55 and col. 10, lines 54-67).
>
> With respect to claim 3, Walker teaches a method for allocating demand (Title). Monitoring demand associated with a plurality of time periods (col. 4, lines 47-55 and col. 6, lines 33-44); imposing a surcharge to customers placing an order during a particular one of the plurality of time periods, wherein the particular one of the plurality of time periods is associated with high level of demand (i.e. the customer is offered a increased price during a selected time (col. 4, lines 47-55 and col. 6, lines 33-44); and withdrawing the surcharge responsive to receipt of a predetermined number of deliveries during the particular of the plurality of time periods (i.e. if the products is not selling quickly during the defined time period, the seller can opt not to accept the offer or withdraw the offer)(col. 4, lines 47-55 and col. 10, lines 54-67).
>
> With respect to claim 6 it differs from claim 3 in that the claim further recite using a server computer for receiving orders for a plurality of time period (Figures 1-3).

Applicants respectfully traverse the rejection of claims 1-6 under 35 U.S.C. 102(b).

Walker, as understood, is directed to methods and apparatus for managing the sale of aging products. A store controller stores a series of prices for a product. Each price has a respective effective period during which that price is effective. A customer submits an offer to buy the product at an "offer price" that is one of the series of prices. The offer also has an offer period that elapses when the respective effective period of the product price elapses. The offer period thereby defines a period during which the offer is effective and after which the offer cannot be accepted. A customer desiring to buy a product may either (i) pay list price and

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purchase the product immediately; or (ii) submit an offer at a (reduced) offer price selected from the series of prices. Each offer specifies (i) a customer identifier for identifying the customer, and (ii) funds or a payment identifier for specifying an account from which funds (typically the offer price) may be collected if the offer is accepted. The customer provides the offer to a clerk operating a POS terminal. If an offer is submitted, it may be accepted, if at all, at any time before the corresponding effective period elapses. Thus, if a customer is willing to wait to receive a product, or is willing to risk never having his offer accepted and thus never receiving the product, he pays a lower price than if he had paid list price to immediately purchase the product.

In contrast, independent claim 1, as amended, recites a method for allocating demand for delivery services associated with computer network based customer orders, said method comprising the steps of: receiving a customer order over a computer network, the customer order including a time period selected from a plurality of time periods for delivery of the customer order; monitoring demand for deliveries of customer orders in each time period of the plurality of time periods; determining at least one time period of the plurality of time periods having a lower level of demand than other time periods of the plurality of time periods; offering an incentive to customers placing an order over the computer network and selecting the determined at least one time period of the plurality of time periods; and withdrawing the offered incentive in response to receipt of a predetermined number of customer orders selecting the determined at least one time period exceeding a predetermined threshold.

Independent claim 3, as amended, recites a method for allocating demand for delivery services associated with computer network based customer orders, said method comprising the steps of: receiving a customer order over a computer network, the customer order including a time period selected from a plurality of time periods for delivery of the customer order; monitoring demand for deliveries of customer orders in each time period of the plurality of time periods; determining at least one time period of the plurality of time periods having a greater level of demand than other time periods of the plurality of time periods; imposing a surcharge to customers placing an order over the computer network and selecting the determined at least one time period of the plurality of time periods; and withdrawing the imposed surcharge in response

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to receipt of a predetermined number of customer orders selecting the determined at least one time period being less than a predetermined threshold.

Independent claim 4, as amended, recites a computer program product embodied on a computer readable medium and executable by a microprocessor for allocating demand for delivery services associated with computer network based customer orders, said computer program product comprising a plurality of executable instructions for executing the steps of: receiving a customer order over a computer network, the customer order including a time period selected from a plurality of time periods for delivery of the customer order; monitoring demand for deliveries of customer orders in each time period of the plurality of time periods; determining at least one time period of the plurality of time periods having a lower level of demand than other time periods of the plurality of time periods; offering an incentive to customers placing an order over the computer network and selecting the determined at least one time period of the plurality of time periods; and withdrawing the offered incentive in response to receipt of a predetermined number of customer orders selecting the determined at least one time period exceeding a predetermined threshold.

Independent claim 6, as amended, recites a system for allocating demand for delivery services associated with sales orders, said system comprising: at least one client computer, the at least one client computer including a browser configured to display information on goods and operable to submit sales orders for goods from customers, the sales order including a time period selected from a plurality of time periods for delivery of the sales order; a server computer connected to the at least one client computer by a computer network, the server computer being configured to receive sales orders from the at least one client computer, the server computer comprising: a microprocessor; computer instructions executable by the microprocessor for monitoring demand for deliveries of sales orders in each time period of the plurality of time periods; computer instructions executable by the microprocessor for determining at least one time period of the plurality of time periods having a greater level of demand than other time periods of the plurality of time periods; computer instructions executable by the microprocessor for displaying a surcharge on the browser and imposing the surcharge to customers placing an order selecting the determined at least one time period of the plurality of time periods; and

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computer instructions executable by the microprocessor for removing the surcharge displayed by the browser and withdrawing the imposed surcharge in response to receipt of a predetermined number of sales orders selecting the determined at least one time period being less than a predetermined threshold.

Several of the features recited by Applicant in independent claims 1, 3, 4 and 6, as amended, are not taught or suggested by Walker. First, Walker does not teach or suggest receiving a customer (or sales) order over a computer network, the customer (or sales) order including a time period selected from a plurality of time periods for delivery of the customer order as recited by Applicant in independent claims 1, 3, 4 and 6. The system in Walker discusses time periods that may be used by customers to purchase products, if the customer's offer for the corresponding time period is accepted by the seller, but does not provide any teaching or suggestion of a time period selected from a plurality of time periods for delivery of the product as recited by Applicant. Thus, since Walker does not teach or suggest all of the limitations recited in independent claims 1, 3, 4 and 6, Applicant respectfully submits that Walker does not anticipate Applicant's invention as recited in independent claims 1, 3, 4 and 6.

Second, Walker does not teach or suggest monitoring demand for deliveries of customer orders in each time period of the plurality of time periods and determining at least one time period of the plurality of time periods having a lower (or higher) level of demand than other time periods of the plurality of time periods as recited by Applicant in independent claims 1, 3, 4 and 6. As discussed above, the system in Walker does not provide any teaching that time periods for delivery are being monitored and thus cannot provide any teaching that a time period has lower or higher demand than any other time period. The system in Walker wants to sell all of its product at list price and only considers the time periods having customer offers at reduced prices when the product is not selling at list price. Furthermore, the time periods are not monitored for demand, i.e., decisions are not made based on the number of customer offers for each time period, but are made based on the inventory of product available. Thus, since Walker does not teach or suggest all of the limitations recited in independent claims 1, 3, 4 and 6, Applicant respectfully submits that Walker does not anticipate Applicant's invention as recited in independent claims 1, 3, 4 and 6.

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Third, Walker does not teach or suggest offering an incentive (or imposing a surcharge) to customers placing an order over the computer network and selecting the determined at least one time period of the plurality of time periods and withdrawing the offered incentive (or imposed surcharge) in response to receipt of a predetermined number of customer orders selecting the determined at least one time period as recited by Applicant in independent claims 1, 3, 4 and 6. To begin, the system in Walker does not discuss any imposition of a surcharge, as recited by Applicant in claims 3 and 6, and is concerned with selling products at the highest obtainable price. The Examiner attempts to characterize the sale of products at list price in Walker as a surcharge are misplaced because the customer is only guaranteed the product if the customer purchases the product at list price. The purchase of the product at reduced prices is at the discretion of the seller. Furthermore and as discussed above, the system in Walker sets forth time periods that may be used by customers to purchase products at lower prices, if the seller accepts the customer's offer for the corresponding time period. However, the time periods are set in advance of the sale of the product and are not changed in view of the demand for offers in a particular time period. Again, the acceptance of customer offers by the seller having a discounted price is not based on the demand for the offers, but is based on the inventory of product available. The invention recited in independent claims 1, 3, 4 and 6 provide incentives or impose surcharges to a customer order selecting a particular time period based on the demand for deliveries for the selected time period. Thus, since Walker does not teach or suggest all of the limitations recited in independent claims 1, 3, 4 and 6, Applicant respectfully submits that Walker does not anticipate Applicant's invention as recited in independent claims 1, 3, 4 and 6.

Therefore, for the reasons given above, independent claims 1, 3, 4 and 6 are believed to be distinguishable from Walker and therefore are not anticipated nor rendered obvious by Walker.

Dependent claims 2, 5 and 7-20 are believed to be allowable as depending from what are believed to be allowable independent claims 1, 3, 4 and 6 for the reasons given above. In addition, claims 2, 5 and 7-20 recite further limitations that distinguish over the applied art. In conclusion, it is respectfully submitted that claims 1-20 are not anticipated nor rendered obvious by Walker and are therefore allowable.

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Newly Added Claims

Claims 7-20 are newly added by the Response to further define Applicant's invention. It is submitted that no new matter has been added by new claims 7-20 because support for the claims can be found in the specification. Claims 7-20 are believed to be allowable for the reasons set forth greater detail above and as depending from independent claims 1, 3, 4 and 6.
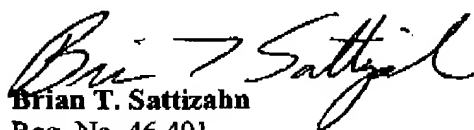
CONCLUSION

In view of the above, Applicant respectfully requests reconsideration of the Application and withdrawal of the outstanding objections and rejections. As a result of the amendments and remarks presented herein, Applicant respectfully submits that claims 1-20 are not anticipated by nor rendered obvious by Walker and thus, are in condition for allowance. As the claims are not anticipated by nor rendered obvious in view of the applied art, Applicant requests allowance of claims 1-20 in a timely manner. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,
McNEES, WALLACE & NURICK

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